

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0573, Joan Hartwell & a. v. City of Lebanon, the court on April 8, 2005, issued the following order:

The plaintiffs, Joan Hartwell and other abutters, appeal an order of the superior court affirming the decision of the Lebanon Planning Board (board) to approve the Sachem Village Planned Unit Recreational Development (proposal). They contend that the proposal is primarily a residential development and as such does not qualify as a Planned Unit Recreational Development. We affirm.

Superior court review of planning board decisions is limited. See Summa Humma Enters. v. Town of Tilton, 151 N.H. 75, 79 (2004). The superior court is required to treat the factual findings of the planning board as prima facie lawful and reasonable and cannot set aside its decision absent unreasonableness or an identified error of law. Id.

The Lebanon zoning ordinances list four objectives for its Planned Unit Recreational Development provisions and contain several other requirements. The plaintiffs limit their claim of error to whether the board and trial court correctly found that the proposal integrated outdoor recreational use of the parcel as the principal land use with residences as a secondary land use. We will assume that this issue has been adequately briefed.

We review the interpretation of a zoning ordinance de novo, construing its words and phrases according to their common and approved usage. Duffy v. City of Dover, 149 N.H. 178, 181 (2003). The plain and ordinary meaning of the word “principal” is “most important, consequential or influential: relegating comparable matters, items, or individuals to secondary rank,” Webster’s Third New International Dictionary 1802 (unabridged ed. 2002); the plain and ordinary meaning of the word “secondary” is “of second rank, importance or value.” Id. at 2050.

The trial court found that the proposal included an athletic complex portion comprised of approximately twenty-seven acres, a housing complex portion of approximately thirty-four acres, and an open space and public recreational use of an extensive trail network comprised of 291 acres. These findings are supported by the record. Accordingly, we find no error in the trial court’s conclusion that the proposal integrated outdoor recreational use of the parcel as the principal land use with residences as a secondary land use. That

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the proponents of the proposal may have previously sought approval of the project under a different zoning ordinance does not alter our conclusion.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**

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